

November 29, 2006

**VIA EMAIL TO: hgrezmiel@ceq.eop.gov**

**VIA OVERNIGHT MAIL TO:**

NEPA Modernization (CX)  
Attn: Associate Director for NEPA Oversight  
722 Jackson Place NW  
Washington DC 20503

**Re: Williams Production RMT Company's Comments on CEQ Proposed Guidance on  
Categorical Exclusions**

Dear Mr. Greczmiel,

Williams Production RMT Company ("Williams") takes this opportunity to comment on the Council on Environmental Quality's ("CEQ") proposed guidance for Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act ("NEPA"), 71 Fed. Reg. 54,816 (Sept. 19, 2006). Williams is one of the major gas producers in the Rocky Mountain region. Many of Williams' activities on public lands require federal approval and associated NEPA compliance by the Bureau of Land Management ("BLM") or other federal agencies. NEPA compliance, depending on the scope of the proposed action, can take months and even years to complete. Given the importance of efficient energy development to Williams as well as the nation's citizens who rely on domestic energy production, Williams supports CEQ's efforts to improve and modernize NEPA by avoiding redundant and duplicative analyses whenever possible. Williams commends CEQ's efforts to provide guidance on implementing categorical exclusions ("CXs") for the purpose of streamlining and speeding the approval process for common projects with minimal environmental impacts. The following comments are intended to assist the CEQ to clarify the proposed guidance for ease of use and understanding by federal agencies and project proponents.

**Statutorily Created or Previously Designated Categorical Exclusions**

The proposed guidance does not mention CXs established by Congress through the legislative process. Congress has recently enacted such CXs in Section 390 of the Energy Policy Act of 2005. Pub. L. No. 109-58, 119 Stat. 594, § 390. CEQ's guidance should clarify that it is not intended to repeal, amend, or impose additional requirements on the use of statutorily created CXs. *United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 26 (1982) (when agency promulgated regulations conflict with statute, the statute controls). Further, many agencies have already established CXs to cover a variety of activities with non-significant environmental impacts.

CEQ should acknowledge the existence of these exclusions and clarify that existing CXs will remain in effect.

### **Substantiating a New Categorical Exclusion**

CEQ has provided four categories of documentation that might support establishing a new CX: (1) Evaluating an agency's implemented actions; (2) Impact demonstration projects; (3) Professional staff and expert opinions, and scientific analyses; and (4) Benchmarking public and private entities' experiences. Williams supports the substantial flexibility given to the agencies in determining how best to support a new CX. Each agency, within its own area of expertise, should remain free to exercise its discretion to use whatever method of support the agency deems appropriate under the circumstances. Williams also suggests the following changes:

- **CEQ should include a statement of its support for the establishment and use of new CXs.** CEQ should make clear that CXs are not unusual or extraordinary in the NEPA context, but are essential tools in the NEPA toolbox. They should be established and used whenever possible to streamline the NEPA process, cut down on paperwork, avoid duplication of efforts, and avoid the waste of scarce resources for preparation of environmental analyses.
- **In establishing a CX, an agency should rely on existing data to the extent possible.** Additional studies or analyses may not be necessary if the agency has sufficient history or experience with the action proposed for a CX. A summary by the agency of existing data in support of the CX may be all that is required.

### **Procedures for Establishing a New Categorical Exclusion**

Given the purpose of CXs to identify activities with little environmental impact to streamline project approvals, the creation of CXs should not require extensive process. CEQ has provided a list of steps for establishing a CX, including consultation with CEQ before and after publication of the proposed CX in the Federal Register and providing an opportunity for the public to comment on the proposed CX. Williams believes the process described is reasonable.

### **Using an Established Categorical Exclusion**

CXs play a vital role in the NEPA process. Williams supports agencies' use of CXs whenever possible to avoid redundant and duplicative environmental analyses. By excluding minimally disturbing activities from NEPA consideration, agencies can concentrate their resources on considering impacts and implementing mitigation measures for those projects with the most potential for significant effects.

The CEQ guidance contemplates that each agency must determine the extent of documentation necessary to use a categorical exclusion. The guidance should make clear, however, that if an agency determines that a CX applies, it need not prepare extensive documentation. To do so would defeat the purpose of establishing the CX in the first instance.

A simple checklist or form could be prepared by the agency to document (1) that the proposed action falls within the CX and (2) no extraordinary circumstances preclude its application.

CEQ also encourages public notice when using a CX to authorize an activity of “high public interest.” A CX is not a NEPA document and public notice and involvement for the application of a CX is unnecessary. Indeed, the public will have had an opportunity to comment when the CX was established. If the agency, after having considered public comment on establishing the CX, determines that the class of activities will have little or no environmental impact and that the proposed action falls within the category of activities authorized by the CX, there is no need for additional public review. CEQ should clarify that public notice is not necessary to use a CX.

### **Periodic Review of Categorical Exclusions**

CEQ also “encourages” the periodic review of CXs to revise CXs that are no longer effective.” The guidance suggests that records might be kept by the agencies on how and when CXs are used, to facilitate the identification of CXs with little utility as candidates for revision and potential expansion. Williams supports periodic review, recognizing that continued reflection and refinement will lead to well-crafted and better-utilized CXs. Williams also realizes that agencies with limited resources may not have the time or budget to conduct random or systematic reviews of their CXs.

Thank you for the opportunity to comment on CEQ’s proposed guidance for the establishment and use of categorical exclusions. With modest clarification, Williams believes the guidance will prove useful to agencies as well as project proponents in streamlining the permitting process while protecting environmentally sensitive resources in compliance with NEPA.

Yours truly,

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